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D130/9/7

BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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(PTC 26)

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CO-PROSECUTORS' URGENT APPLICATION FOR EXTENSION OF TIME TO FILE A JOINT RESPONSE TO CHARGED PERSONS IENG THIRITH AND KHIEU SAMPHAN'S APPEALS AGAINST ORDER ON USE OF STATEMENTS WHICH WERE OR MAY HAVE BEEN OBTAINED BY TORTURE

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INTRODUCTION

1. Pursuant to Internal Rule 39(4)(a), the Co-Prosecutors seek urgently an extension of time to file their joint response to the Charged Persons IENG Thirith and KHIEU Samphan's respective appeals against the Order on Use of Statements Which Were or May Have Been Obtained by Torture (the "Order") issued by the Co-Investigating Judges on 28 July 2009.¹ The Co-Prosecutors request a similar extension period that was granted by the Pre-Trial Chamber to the Co-Lawyers for the Charged Person IENG Thirith on 18 August 2009.² The Co-Prosecutors also inform the Pre-Trial Chamber of their will to file a joint response to the appeals filed respectively by IENG Thirith on 10 September 2009³ and KHIEU Samphan on 27 August 2009 (its English version was notified on 11 September 2009).⁴

SUMMARY OF RELEVANT FACTS

2. On 30 July 2009, the Co-Lawyers for Charged Person IENG Thirith filed a Notice of Appeal against the Order (D130/9). On 31 July 2009, the Co-Lawyers filed a Request for Extension of Time Limit seeking an extension of 14 additional days to the time period for the filing of their Appeal (D130/9/1). In that request, the Co-Lawyers stated that if their extension was allowed, "the defence would not object to a similar request by the Co-Prosecutors or other parties to file a response thereto" (para. 5). They confirmed their no-objection in their 'Defence Response to Co-Prosecutors' Application for Extension of Time' dated 27 August 2009 (D130/9/4).
3. On 18 August 2009, the Pre-Trial Chamber granted the 14 day extension requested by IENG Thirith's Co-Lawyers, directing that their Appeal be filed by Thursday, 10 September 2009 at 12:00 pm (D130/9/2). The Appeal was effectively filed on 10

¹ CIJ Order on Use of Statements Which Were or May Have Been Obtained by Torture, 28 July 2009, D130/8, ERN 00355926-33 (ENG).

² PTC Decision on the Defence Application for Extension of Time Limit for Appeal against Order on Use of Statements Which Were or May Have Been Obtained by Torture, 18 August 2009, D130/9/2, ERN 00361767-69 (ENG). Note that by decision dated 4 September 2009 (D130/9/5), the Pre-Trial Chamber deemed premature a previous Co-Prosecutors' Application for Extension of Time and declared it inadmissible.

³ Ieng Thirith's Appeal against Order on Use of Statements Which Were or May Have Been Obtained by Torture, 10 September 2009, D130/9/6, ERN 00374841-72 (ENG), 00374873-4917 (KHM).

⁴ *Mr Khieu Samphan's Appeal Against the Order on Use of Statements Which Were or May Have Been Obtained by Torture*, 27 August 2009 (PTC 27), D130/10/1, ERN 00374825-28 (ENG) and 00367321-24 (FRE).

September 2009 and was notified to the Co-Prosecutors in English and Khmer on 11 September 2009 (D130/9/6). Consequently, the deadline for filing the Co-Prosecutors' response would be Friday, 25 September 2009.⁵

4. Although they did not file any notice of appeal within ten days from the CIJ Order's notification, KHIEU Samphan's Defence filed on 27 August 2009 their submissions on Appeal against the same Order. The English translation of the Appeal has been notified to the Co-Prosecutors on 11 September 2009. This KHIEU Samphan's appeal mainly refers in advance to the arguments contained in IENG Thirith's future appeal. The Co-Prosecutors consider that responding to KHIEU Samphan's arguments at the same time as IENG Thirith's appeal in a joint response shall support judicial economy and a good administration of justice.
5. During the period that the Office of the Co-Prosecutors would be required to draft and translate their joint response, the two principal attorneys who worked on the briefs related to the torture issue in the proceedings before the Co-Investigating Judges are scheduled to be working on the DUCH trial in Case 001 (coming hearings and preparation of closing submissions). In addition, the dates of Friday 18 September and Monday 21 September are official court holidays for both national and UN personnel (Pchum Ben), and 24 September 2009 is the Constitution Day holiday for national staff. The Co-Prosecutors therefore anticipate that, due to exceptional circumstances being the intervening public holidays and the other obligations of the legal personnel assigned to this matter, additional time will be required to file their joint response to these Appeals.

ARGUMENT

6. The legal issues relating to the admissibility and evidentiary use of the S-21 confessions are of considerable importance to the proceedings before this Court, and the parties should be provided adequate time to properly research and brief these issues. Given the substantive importance of these Appeals and the insufficient time that the Co-Prosecutors would have to work on the matter between the 11th and the end of

⁵ Article 8.3 of the Practice Direction on Filing of Documents Before the ECCC grants 15 calendar days' time for the filing of a response to a pleading. Article 8.5 stipulates that the time limit shall commence on the date of notification of the pleading.

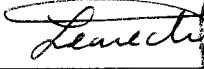
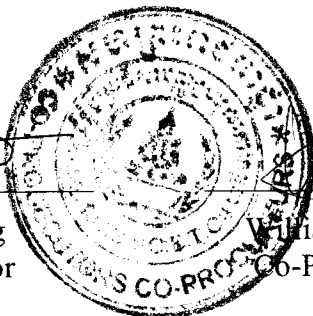
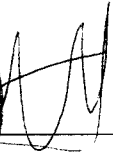
September 2009, it is submitted that it is appropriate for the Pre-Trial Chamber to grant additional time for the Co-Prosecutors to file their joint response brief.

7. The Co-Prosecutors request an extension of time similar to that was granted by the Pre-Trial Chamber to the Co-Lawyers for the Charged Person IENG Thirith for the filing of their Appeal. They request the Pre-Trial Chamber to authorize them to file their joint response by Monday 12 October 2009. The IENG Thirith's Co-Lawyers have stated twice that they do not object to the granting of an extension to the Co-Prosecutors.⁶ This extension shall not cause any material prejudice to the rights of the Charged Persons and shall serve the ends of justice. The Co-Prosecutors request the Pre-Trial Chamber to decide on this application on an expedited basis.

CONCLUSION

8. The Co-Prosecutors therefore request that the Pre-Trial Chamber decide on this application on an expedited basis and authorize the filing of the Co-Prosecutors' joint response to the respective Appeals of IENG Thirith and KHIEU Samphan by Monday 12 October 2009.

Respectfully submitted,




 CHEA Leang
 Co-Prosecutor

William SMITH
 Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this 11th day of September 2009.

⁶ Defence Urgent Request for Extension of Time Limit for Appeal against 'Order on Use of Statements Which Were or May Have Been Obtained by Torture', 31 July 2009, D130/9/1, ERN 00357072-73 (ENG), para.5; Defence Response to Co-Prosecutors' Application for Extension of Time, 27 August 2009, D130/9/4, ERN 00369835-36 (ENG).